

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nicholas Marantz	Team: Team # 5	CCRB Case #: 200309391	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 11/24/2003 9:00 PM, Tuesday, 11/25/2003 12:00 AM	Location of Incident: § 87(2)(b) & § 87(2)(b)	Precinct: 34	18 Mo. SOL 5/24/2005	EO SOL 5/24/2005	
Date/Time CV Reported Tue, 11/25/2003 6:29 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 11/25/2003 6:29 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			034 PCT
2. SGT Robert Jones	01616	881035	034 PCT
3. POM Fabio Nunez	01432	925839	034 PCT
4. POF Jessica Rivera-Caicedo	30298	925989	034 PCT
5. POM Luis Vidal	15759	927639	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jesse Taylor	23485	924658	034 PCT
2. POM Harvin Hart	00829	924670	034 PCT
3. POM Erik Rodriguez	25962	929066	034 PCT
4. POM Luis Garcia-Ortiz	91756	917665	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Force: On November 24, 2003, at the corner of § 87(2)(b) and § 87(2)(b) an officer pointed his gun at § 87(2)(b)	§ 87(2)(b)
B. An officer	Force: On November 24, 2003, at the corner of § 87(2)(b) and § 87(2)(b) an officer struck § 87(2)(b) with a gun.	§ 87(2)(b)
C. POM Luis Vidal	Force: On November 24, 2003, at the corner of § 87(2)(b) and § 87(2)(b) Officer Luis Vidal used physical force against § 87(2)(b)	§ 87(2)(b)
D. An officer	Force: On November 24, 2003, at the corner of § 87(2)(b) and § 87(2)(b) an officer used physical force against § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
E.SGT Robert Jones	Discourtesy: On November 24, 2003, in the 34th Precinct stationhouse, Sergeant Robert Jones spoke obscenely and rudely to § 87(2)(b)	
F.POM Fabio Nunez	Abuse: On November 25, 2003, on § 87(2)(b) between § 87(2)(b) and § 87(2)(b) Officer Fabio Nunez stopped and questioned § 87(2)(b)	
G.POM Fabio Nunez	Abuse: On November 25, 2003, on § 87(2)(b) between § 87(2)(b) and § 87(2)(b) Officer Fabio Nunez frisked and searched § 87(2)(b) .	

## Synopsis

§ 87(2)(b) contacted the CCRB on November 25, 2003, alleging that on the previous day, an officer pointed a gun at an unknown male, identified by investigation as § 87(2)(b) (allegation A). § 87(2)(b) also claimed that an officer used physical force against her son, § 87(2)(b) (allegation D). During her interview at the CCRB on December 8, 2003, § 87(2)(b) claimed that when she went to the 34<sup>th</sup> Precinct stationhouse on November 24, 2003, following § 87(2)(b)'s arrest, an officer identified by investigation as Sergeant Robert Jones spoke discourteously to her (allegation E). § 87(2)(b) who was interviewed on December 17, 2003, claimed that an officer struck § 87(2)(b) with a gun (allegation B) and that an officer, identified by investigation as Officer Luis Vidal, used physical force against § 87(2)(b) (allegation C). § 87(2)(b) also claimed that on November 25, 2003, Officer Fabio Nunez stopped him (allegation F) and frisked him (allegation G). § 87(2)(g)

### Summary of Complaint

§ 87(2)(b) a § 87(2)(b) legal secretary, contacted the CCRB call processing system on November 24, 2004 (enc. 3), alleging that while police officers were arresting another person, identified by investigation as § 87(2)(b) they grabbed her son, § 87(2)(b) slammed him against a wall and arrested him. When she went to the precinct she was kicked out. § 87(2)(b) sustained injuries to his hand and back, which were treated with ice packs. § 87(2)(b) claimed that officers placed a gun to § 87(2)(b)'s head.

§ 87(2)(b) was interviewed at the CCRB on December 8, 2003 (enc. 1.a). At 8:30 PM on November 24, 2003, § 87(2)(b) sent her son, § 87(2)(b) § 87(2)(b) to pick up food from the § 87(2)(b) on § 87(2)(b) and § 87(2)(b) in Manhattan. Half an hour later, a friend of her son named § 87(2)(b) (last name unknown to § 87(2)(b) identified by investigation as § 87(2)(b) knocked on § 87(2)(b)'s door and told her that her son had been arrested. § 87(2)(b) called a taxi and went to the 34<sup>th</sup> Precinct stationhouse with her boyfriend, § 87(2)(b) and her neighbor, § 87(2)(b) § 87(2)(b). When they arrived, § 87(2)(b) was standing in front of the desk, handcuffed, speaking with the desk sergeant, identified by investigation as Sergeant Robert Jones. § 87(2)(b) asked what her son had done and why he had been arrested in a tone that she described during her interview as “hysterical.” Sergeant Jones replied, “Have a fucking seat.” “But why is he here?” § 87(2)(b) asked. “He’s only § 87(2)(b)” “Have a seat and shut up,” answered Sergeant Jones. “If not, I’m going to have you kicked out of the precinct.” § 87(2)(b) stated, “This is a public place,” and Sergeant Jones responded, “No, it’s not.” He told § 87(2)(b) that if she did not leave, he would arrest her, and she departed.

The next day, § 87(2)(b), § 87(2)(b), and § 87(2)(b) went to Rite Aid on § 87(2)(b) and § 87(2)(b) some time between 7:00 and 7:30 PM. § 87(2)(b) completed his shopping, left the articles that he had purchased with § 87(2)(b) and headed home. Five minutes later, he called § 87(2)(b) on her cellular phone and informed her that he had been stopped between § 87(2)(b) and § 87(2)(b) on § 87(2)(b) by the same officer who had arrested him the night before.

## Results of Investigation

### Civilian Statements

§ 87(2) § 87(2)(b)

§ 87(2) § 87(2)(b) § 87(2)(b) § 87(2)(b), was interviewed at § 87(2)(b) on December 17, 2003 (enc. 2.a). Prior to his interview, § 87(2)(b) expressed concern to the investigator that by providing a statement, § 87(2)(b) On November 24, 2003 at approximately 9:00 PM, § 87(2)(b) was parking his vehicle on the northeast corner of § 87(2)(b) § 87(2)(b). He saw officers, identified by investigation as Officer Luis Vidal and Officer Fabio Nunez, running after an individual, identified by investigation as § 87(2)(b) One of the officers had his gun drawn § 87(2)(b) did not know which officer). The officers brought § 87(2)(b) to the ground next to a restaurant on the southwest corner of the intersection, but § 87(2)(b) did not see what happened when he was on the ground. Although the officers' motions seemed to indicate that they were striking § 87(2)(b) § 87(2)(b) did not see them make contact with him, because a crowd of thirty to forty civilians was obscuring his view.

When § 87(2)(b) exited his vehicle and crossed the street, he heard people telling the officers that they should not hit § 87(2)(b) Another individual, identified by investigation as § 87(2)(b) was also in handcuffs. At around this time, three or four patrol cars pulled up. An officer with sergeant's stripes arrived in one of these vehicles. § 87(2)(b) recognized § 87(2)(b) standing ten to fifteen feet from either Officer Nunez or Officer Vidal, yelling at this officer, claiming that the officers' behavior constituted police brutality. § 87(2)(b) was not cursing. The officer grabbed § 87(2)(b) by the arm of his jacket and threw him against the wall, next to a tobacco shop on § 87(2)(b) The officer told § 87(2)(b) that if he wanted to be a "smart mouth," he would be taken into custody; an officer handcuffed § 87(2)(b) and placed him in an RMP.

§ 87(2)(b)

§ 87(2)(b), a § 87(2)(b) Hispanic male was interviewed at § 87(2)(b) on December 17, 2003 (enc. 3.a). When the investigator completed § 87(2)(b)'s confidential witness information sheet prior to the interview, § 87(2)(b) indicated that he had not been injured. At approximately 9:00 PM on November 24, 2003, he left his home to pick up food for his mother at § 87(2)(b) While he was on § 87(2)(b) between § 87(2)(b) and § 87(2)(b) he saw § 87(2)(b) While § 87(2)(b) was standing, talking with friends (all unidentified) who were sitting on a parked car, six officers (four or five of whom had their guns drawn) ran down the block, threw him to the ground, and put their guns to his head. When one officer took § 87(2)(b) to the ground, an unidentified officer hit him on the right temple with a gun. After taking § 87(2)(b) to the ground, unidentified officers hit him in the back. An unidentified officer then lifted § 87(2)(b) and threw him against the wall, with his back to the wall.

§ 87(2)(b) had been standing next to a clothing store, nearby, but when the officers arrived, he moved to the street. He joined a group of acquaintances, including § 87(2)(b) and § 87(2)(b) (last name unknown, identified by investigation as § 87(2)(b) around the corner on § 87(2)(b) where a number of RMPs had stopped. As two of the officers escorted § 87(2)(b) to an RMP, § 87(2)(b) asked Officer Fabio Nunez why the unidentified officer had used excessive force and requested Officer Nunez's shield number, which Officer Nunez provided. All of § 87(2)(b)'s friends were speaking to the officers, asking similar questions. Although § 87(2)(b) raised his voice, he did not yell or scream. An officer told § 87(2)(b) to "shut up" and officers handcuffed § 87(2)(b) even though, according to § 87(2)(b) § 87(2)(b) was not saying or doing anything. Moments later, Officer Nunez grabbed § 87(2)(b) by the back of his neck and his jacket and threw him against the window of § 87(2)(b) with his face to the wall. § 87(2)(b) did not physically resist and stated that he was charged § 87(2)(a) 160.50. Unidentified officers then searched § 87(2)(b) and § 87(2)(b) and took them to the precinct.

§ 87(2)(b) was in desk area of the 34<sup>th</sup> Precinct stationhouse when his mother, § 87(2)(b) arrived. An officer identified by investigation as Sergeant Robert Jones said, "We're going to come to your block every day and we're going to arrest all of you if you keep standing on the block." § 87(2)(b) asked Sergeant Jones what was going on, and he told her to sit down.

The next day (11/25), § 87(2)(b) went to Rite Aid with his mother and his friend, § 87(2)(b). While he was at Rite Aid, his aunt called on his cell phone, and he departed alone to see his cousin. As he was walking on § 87(2)(b) between § 87(2)(b) and § 87(2)(b), he stopped to greet a friend whose name he did not remember. He gave his friend “pound,” meaning that their fists made contact, and started talking with this friend.

Officer Nunez, exited from the driver’s seat of an RMP, approached him, told him to stop, patted his coat pockets, put his hands in the pockets of § 87(2)(b)’s North Face jacket (which has two interior pockets and four exterior pockets), and patted down § 87(2)(b)’s pants. § 87(2)(b) had keys in his left upper coat pocket and was not carrying anything else. Officer Nunez did not ask where § 87(2)(b) was going or coming from. He did, however, ask § 87(2)(b) whether he was “the kid from yesterday.” Officer Nunez did not ask for name or address. A male white officer stayed in car throughout this interaction. After this incident, § 87(2)(b) walked back to Rite Aid and told his mother what had happened.

§ 87(2)(b)

§ 87(2)(b) a § 87(2)(b) Hispanic male, was interviewed at the Manhattan House of Detention on June 10, 2004 (enc. 4). On November 24, 2003, at approximately 9:00 PM, § 87(2)(b) was speaking on a payphone to his girlfriend on the corner of § 87(2)(b) and § 87(2)(b) in front of the restaurant § 87(2)(b). He was not talking with any people in a parked car. Prior to speaking on the phone, he had been “hanging out on the block” for an hour or two. He had been on the phone for approximately five minutes when three marked RMPs pulled up. § 87(2)(b) had no indication that the officers were looking for him. He was finished with his phone call, so he hung up the phone and walked towards § 87(2)(b) on § 87(2)(b) in the direction of his home. § 87(2)(b) later stated that he left because the officers arrived, but that he did not run away.)

§ 87(2)(b)’s friend, § 87(2)(b) (last name unknown), was standing on the corner. When he turned around to speak with her, an officer identified by investigation as Officer Luis Vidal hit him in the right cheek (possibly with his left hand), causing him to fall on the sidewalk basement door of § 87(2)(b) and scrape his left elbow. This occurred ten or twelve steps from the payphone. A white male officer had his gun drawn and pointed at § 87(2)(b). Officer Vidal frisked § 87(2)(b), handcuffed him, and picked him off the ground. § 87(2)(b) did not resist arrest. § 87(2)(b) asked why he was being arrested, and Officer Nunez informed him that he was being charged § 87(2)(a) 160.50. § 87(2)(b) then realized that he was being arrested as a result of a fight that had occurred several days earlier.

Officer Nunez waited in the RMP with § 87(2)(b). A number of people from the neighborhood were standing about ten paces from the RMP, protesting the officers’ treatment of § 87(2)(b). This group included § 87(2)(b), § 87(2)(b) (last name unknown, identified by investigation as § 87(2)(b) and § 87(2)(b) (identified by investigation as § 87(2)(b)). § 87(2)(b) said, “That’s fucked up. You’re Hispanic. He’s Hispanic. You’re treating him this way.” Officer Vidal told § 87(2)(b) to shut up. § 87(2)(b) persisted, and Officer Vidal moved to grab him. § 87(2)(b) turned to walk away, but Officer Vidal grabbed him by the right arm and middle back of his jacket and threw him against the gate of a storefront on the opposite side of the smoke shop from § 87(2)(b). Officer Vidal then handcuffed § 87(2)(b) and placed him in the RMP with § 87(2)(b). § 87(2)(b) did not see any interaction between § 87(2)(b) and the officers.

At the stationhouse, § 87(2)(b) saw § 87(2)(b). § 87(2)(b) came to file a complaint while § 87(2)(b) was in the desk area. When she entered the stationhouse she yelled at officers and asked to file a complaint, but Officer Vidal escorted her from the stationhouse. § 87(2)(b) did not see whether Officer Vidal physically escorted her). § 87(2)(b) was charged § 87(2)(a) 160.50 and released on recognizance. § 87(2)(b) never learned what had happened to § 87(2)(b). § 87(2)(b) did not sustain any injuries to his face. § 87(2)(b) had not consumed drugs or alcohol prior to the incident. He was not carrying anything at the time.

#### Attempts to Contact Other Witnesses

The undersigned traveled to § 87(2)(b) on December 18, 2003 to interview § 87(2)(b), § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b). § 87(2)(b) was not present and the investigator was informed that § 87(2)(b) and § 87(2)(b) could only be interviewed in the presence of a Spanish language translator. None of the witnesses interviewed had contact information for § 87(2)(b).

§ 87(2)(b) and the summons issued to him could not be found by the Police Department (enc. 37-D). Given the commonness of the name, BADS, internet, and Metrosearch searches were not conducted. Numerous calls were placed and letters sent to witnesses § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) with negative results. On August 26, 2004, the undersigned traveled to § 87(2)(b) to determine whether anyone in the restaurant had witnessed the incident (enc. 36-G). No restaurant employees recalled such an incident.

## **Officer Statements**

### *Officer Fabio Nunez*

Officer Fabio Nunez of the 34<sup>th</sup> Precinct was interviewed at the CCRB on April 7, 2004 (enc. 6). On November 24, 2003, Officer Nunez worked in uniform from 4:00 PM to 12:00 AM, patrolling sector A of the 34<sup>th</sup> Precinct with Officer Harvin Hart in marked RMP, number 2661. Officer Nunez's memo book indicates that he issued a summons (#§ 87(2)(b)) to § 87(2)(b) for § 87(2)(a) 160.50 at 8:47 PM.

Officer Nunez had no recollection of the incident or of issuing the summons. He did not have any previous knowledge of § 87(2)(b). At the time of the interview, Officer Nunez had not been to court regarding the summons. He did not throw anyone against a wall or a pane of glass. He did not tell anyone that if they wanted to be a "smartmouth," they would be taken into custody.

On November 25, 2003, Officer Nunez worked from 4:00 PM to 12:00 AM, patrolling sector A of the 34<sup>th</sup> Precinct with Officer Harvin Hart as the operator marked RMP, number 2661. His memo book indicates that at 6:45 he responded to a call for ambulance assistance at § 87(2)(b) between § 87(2)(b) and § 87(2)(b). He marked the job unfounded at 7:00 PM. At 7:39 PM he responded to a "10-29" at § 87(2)(b) and § 87(2)(b) (Officer Nunez did not know what a "10-29" was; according to the NYPD Radio Code Signals Insert, it means "Other Crimes in the Past.") He prepared a complaint report at 8:08 PM. At 8:08 PM, he responded to a "10-22" at § 87(2)(b) and § 87(2)(b) (Officer Nunez did not know what a "10-22" was, although he believed it to be "something in the past;" according to the NYPD Radio Code Signals Insert, it means "Past Larceny.") At 8:30 PM, he marked the job 90-Y, which he explained means "Unfounded" (according to the NYPD Radio Code Signals Insert, it means "Unnecessary"). At 8:31 PM, he responded to a car alarm at § 87(2)(b) and marked the job 90-X [Unfounded] at 8:50 PM.

Officer Nunez did not recall why he was present at § 87(2)(b) and § 87(2)(b). § 87(2)(b) is two blocks away from § 87(2)(b). He did not stop anyone on that date and did not see any other officer stop anyone. Nor did he have any discussion with any civilians about the incident on the previous day.

### *Officer Jesse Taylor*

Officer Jesse Taylor of the 34<sup>th</sup> Precinct was interviewed at the CCRB on April 9, 2004 (enc. 8). On November 24, 2003, Officer Taylor worked in uniform from 3:00 PM to 11:35 PM, patrolling sector A of the 34<sup>th</sup> Precinct with Officer Luis Perez, as the recorder of marked RMP #2161. His memo book indicates that at 9:03 PM he transported one defendant to the 34<sup>th</sup> Precinct stationhouse for the House of Worship (HOW) Auto and went on meal at 9:10 PM.

Officer Taylor recalled that he and Officer Perez responded to an assault at the southwest corner of § 87(2)(b) and § 87(2)(b). Officers Taylor and Perez pulled up southbound in front of § 87(2)(b). Officer Nunez had an arrest and was either leading the defendant to his RMP or already had him in the vehicle. Officer Taylor asked whether everything was under control, and Officer Nunez confirmed this. Officers Taylor and Perez transported another defendant to the stationhouse on behalf of the House of Worship (HOW) Auto, which investigation determined to have been assigned to Officer Jessica Rivera-Caicedo. Officer Taylor did not recall the identity of that defendant. He did not see any struggle between Officer Nunez and any civilians. Officer Taylor did not recall whether there was an unusually large crowd at that intersection (he said that a crowd of twenty-five to fifty people usually populates the corner). Officer Taylor could not describe the individual that he transported to the stationhouse. He did not recall the identity of the desk sergeant on that date and did not remember being present in the desk area. Nor did he recall any interaction between § 87(2)(b) and the desk sergeant. He believed that Officer Nunez arrested a young male Hispanic.

*Officer Harvin Hart*

Officer Harvin Hart of the 34<sup>th</sup> Precinct was interviewed at the CCRB on May 12, 2004 (enc. 10). On November 24, 2003, Officer Hart worked in uniform from 3:00 PM to 11:35 PM, patrolling sector D of the 34<sup>th</sup> Precinct as the recorder of a marked RMP (# 2661). His memo book indicates that at 7:50 PM, he responded to a call for security holding at § 87(2)(b) and arrested one defendant at 8:11 PM. At 8:25 PM, he was in the stationhouse, processing the arrest, and he ended his tour at 11:35 PM. He did not leave the stationhouse once he began processing the arrest, and did not recall any incident at § 87(2)(b) and § 87(2)(b). He did not recall whether Officer Nunez returned to patrol after 8:25 PM. Usually, the two officers stay together, but not invariably.

On November 25, 2003, Officer Hart worked in uniform from 3:00 PM to 11:35 PM, patrolling sector A of the 34<sup>th</sup> Precinct with Officer Nunez as the recorder of a marked RMP (# 2161). According to his memo book, at 6:45 PM, he responded to a vehicle accident at § 87(2)(b) between § 87(2)(b) and § 87(2)(b) which he marked Unfounded at 7:00 PM. The next entry, from 7:39 PM, indicates that he responded to a 10-29 [past crime] at § 87(2)(b) between § 87(2)(b) and § 87(2)(b). At 8:08 PM, he marked the job 93-C [complaint report prepared] and responded to a past larceny at § 87(2)(b). At 8:29 PM, he marked this job 90-Y [Unnecessary], and at 8:31 he responded to a residential alarm at § 87(2)(b), which he marked 90-X [Unfounded]. At 8:52 PM, he responded to a missing persons case at § 87(2)(b).

Officer Hart did not recall what he did between 7:00 PM and 7:39 PM. He had no recollection of Officer Nunez stopping or frisking any males. The location of the alleged stop is in sector A.

*Sergeant Luis Garcia-Ortiz*

Sergeant Luis Garcia-Ortiz, currently of the 40<sup>th</sup> Precinct, was interviewed at the CCRB on June 1, 2004 (enc. 12). On November 24, 2003, Sergeant Garcia-Ortiz, then a police officer in the 34<sup>th</sup> Precinct, worked in uniform from 3:00 PM to 11:35 PM, patrolling sector C of the 34<sup>th</sup> Precinct with his partner, Officer Erik Rodriguez, in a marked RMP. Sergeant Garcia-Ortiz did not bring his memo book to his CCRB interview, and had no recollection of the incident.

*Officer Erik Rodriguez*

Officer Erik Rodriguez of the 34<sup>th</sup> Precinct was interviewed at the CCRB on June 8, 2004 (enc. 14). On November 24, 2004, Officer Rodriguez worked in uniform from 3:00 PM to 11:35 PM, patrolling sector C of the 34<sup>th</sup> Precinct with his partner, Officer Garcia-Ortiz, as the recorder of a marked RMP (#1826). Officer Rodriguez has no entries in his memo book regarding the incident and had no recollection of the incident.

*Officer Luis Vidal*

Officer Luis Vidal of the 34<sup>th</sup> Precinct was interviewed at the CCRB on June 15, 2004 (enc. 16). On November 24, 2003, Officer Vidal worked in uniform from 3:00 PM to 11:35 PM as sergeant's operator, driving Sergeant Emile Provencher in marked RMP (# 4191). His memo book does not contain any entries regarding the incident.

On the evening of November 24, 2003 Officer Vidal was in the 34<sup>th</sup> Precinct stationhouse, performing administrative duties. A male, identified by investigation as § 87(2)(b) § 87(2)(b) walked in, complaining of a past assault and spoke with Officer Rivera-Caicedo. She asked Officer Vidal and Officer Nunez to assist her. Officer Vidal drove with Officer Nunez to § 87(2)(b) and § 87(2)(b) in an RMP (number not recalled). The complainant pointed to a male, identified by investigation as § 87(2)(b) on the corner of § 87(2)(b) and § 87(2)(b) and indicated that § 87(2)(b) had assaulted him. Officer Vidal stopped the car on § 87(2)(b) at the southwest corner the intersection of § 87(2)(b) § 87(2)(b) was standing by the public phone, approximately a car-and-a-half length away. When § 87(2)(b) saw the RMP, he picked up the telephone. Officer Vidal and Officer Nunez exited and approached § 87(2)(b) who started to run. § 87(2)(b) ran westbound on § 87(2)(b) and stopped

of his own accord. The officers grabbed him and handcuffed him. § 87(2)(b) did not offer any struggle and neither officer struck him.

The officers put § 87(2)(b) in an RMP. A crowd of approximately twenty civilians had gathered and began to yell at the officers, berating them. As the officers placed § 87(2)(b) in the car, the crowd began to close in on the officers. Officer Vidal lost track of Officer Nunez at this point. Officer Vidal grabbed a male, identified by investigation as § 87(2)(b) who was standing next to him, handcuffed him, placed him in the RMP with § 87(2)(b) and departed. Officer Vidal did not recall what § 87(2)(b) had been saying. This occurred next to a chicken restaurant on the corner, but Officer Vidal did not throw § 87(2)(b) against the side of the restaurant. He did not put § 87(2)(b) against any surface at any time.

When Officer Vidal arrived at the stationhouse, he learned that § 87(2)(b) was a minor, and prepared a juvenile report. Officer Vidal always wears frameless, oval-shaped glasses. Officer Nunez does not wear glasses.

#### *Officer Jessica Rivera-Caicedo*

BADS arrest report #§ 87(2)(b) (enc. 18) indicates that Officer Jessica Rivera-Caicedo of the 34<sup>th</sup> Precinct arrested § 87(2)(b) at 8:12 PM on November 24, 2003 § 87(2)(a) 160.50. The narrative indicates that at 9:00 PM on November 21, 2003, § 87(2)(b) struck a complainant (unnamed on the arrest report, identified by investigation as § 87(2)(b) § 87(2)(b) about the body and face with brass knuckles, which were not recovered. § 87(2)(b) sustained injuries to the face.

Officer Rivera-Caicedo was interviewed at the CCRB June 11, 2004 (enc. 19). On November 24, 2003, Officer Rivera-Caicedo worked in uniform from 3:00-11:35 PM, as the operator of the House of Worship auto (RMP #1832). Her partner was Officer Michelle Vasquez. The notes in her memo book confirmed that she made an arrest on § 87(2)(b) and § 87(2)(b). Officer Rivera-Caicedo stated that she was unable to observe the arrests of § 87(2)(b) and the other two males arrested on the scene. Officer Rivera-Caicedo also stated that she did not observe any physical interaction between the two assisting officers, Vidal and Nunez, and the civilians on the corner of § 87(2)(b) and § 87(2)(b).

Officer Rivera-Caicedo was in the precinct with her partner Officer Vasquez at 8:58 PM when a complainant entered the precinct to report an assault. The complainant had injuries to the face, allegedly due to being hit repeatedly in the face with brass knuckles. Officer Rivera-Caicedo prepared a complaint report in approximately thirty minutes and then left the precinct to locate the suspect. The complainant said that he had seen the suspect, § 87(2)(b) on the corner of § 87(2)(b) and § 87(2)(b). Officer Rivera-Caicedo stated that she asked Officers Nunez and Vidal to assist with the identification of the suspect. Officers Vidal and Nunez traveled in a separate vehicle from Officers Rivera-Caicedo and Vasquez. The complainant identified § 87(2)(b) on or by a pay phone on the corner of § 87(2)(b) and § 87(2)(b). Both vehicles were approximately 20 feet ahead of the pay phone (which was 20 feet from the corner) on the same side of the street. Officer Rivera-Caicedo claimed that they positioned themselves in this manner to prevent § 87(2)(b) from seeing the complainant in the back seat of Officer Rivera-Caicedo's RMP.

Officers Vidal and Nunez exited the RMP and walked towards the corner, in the vicinity of the payphone where § 87(2)(b) was standing. When § 87(2)(b) saw the officers exit the RMP, he ran north on § 87(2)(b) and west on § 87(2)(b). When Officer Rivera-Caicedo, saw § 87(2)(b) run around the corner, she exited the vehicle and ran up to the corner, but did not turn the corner. Officer Rivera-Caicedo stated that she exited the RMP, but did not go more than 10 feet away because she did not want to leave the complainant in the RMP alone. After § 87(2)(b) and Officers Vidal and Nunez turned the corner she was unable to see what happened.

Officer Rivera-Caicedo stated that the next time she saw § 87(2)(b) and Officers Nunez and Vidal, they were coming back around the corner with three men in handcuffs. One of these men was § 87(2)(b). She was unsure of the identities of the other two men who were arrested (they have been identified by investigation as § 87(2)(b) and § 87(2)(b) and did not know how or why they were arrested. Officer Rivera-Caicedo stated that there were 30 or 40 youths on the corner of § 87(2)(b) and § 87(2)(b) some of whom were unhappy that § 87(2)(b) was being arrested. She assumed that some of these people became unruly. Officer Rivera-Caicedo stated that she was unable to see what happened



with the crowd, although the crowd was on the same corner as the RMP, because there was some distance between them and she had her back turned at some point. Officer Rivera-Caicedo said that the arrests were “uneventful” and that the four officers were there for no more than seven minutes. § 87(2)(b), § 87(2)(b), and § 87(2)(b) were placed in the back of Officers Vidal and Nunez’s RMP and transported back to the precinct. At the precinct, § 87(2)(b) was issued summons, § 87(2)(b) was issued youth referral and § 87(2)(b) was charged § 87(2)(a) 160.50. Officer Rivera-Caicedo stated that she did not observe any physical interaction between the officers and any of the civilians on the corner. Officer Rivera-Caicedo did not see Officer Nunez grab any civilians. She did not know of or hear about any physical force being used against § 87(2)(b) or any of the civilians. Officer Rivera-Caicedo stated that § 87(2)(b) did not have any injuries at the time of his arrest. After returning to the precinct, Officer Rivera-Caicedo did not have any interaction with any of the men arrested or § 87(2)(b).

#### *Sergeant Robert Jones*

Sergeant Robert Jones of the 34<sup>th</sup> Precinct was interviewed at the CCRB on August 19, 2004 (enc. 21). On November 24, 2003, Sergeant Jones worked in uniform from 4:00 PM to 12:57 AM, as the conditions and desk sergeant. His memo book indicates that he went on desk at 8:00 PM and left the desk at 10:00 PM. Sergeant Jones recalled loud and boisterous prisoners being brought into the stationhouse. A large group of people came in after the prisoners, also screaming. Sergeant Jones realized that a few members of this crowd were parents of the people who had been arrested. Sergeant Jones instructed officers, whose identities he did not recall, to escort most of the crowd from the stationhouse. He permitted the parents to remain in the stationhouse.

Sergeant Jones did not tell any civilians to “have a seat and shut up.” He might have instructed an officer to eject § 87(2)(b) from the stationhouse. He did not tell anyone to “have a fucking seat.” He did not tell any of the arrest subjects that officers would come to their block every day and arrest them. § 87(2)(b) between § 87(2)(b) and § 87(2)(b) is known for marijuana sales and quality of life violations. Sergeant Jones conducts operations there regularly. He said that it would be reasonable to warn someone who had been arrested at that location that officers would continue to conduct regular operations there.

#### **Police Department Documents**

According to omniform complaint report #§ 87(2)(b) (enc. 22), at 10:30 PM on November 24, 2003, § 87(2)(b) § 87(2)(b) alleged that at 9:00 PM on November 21, 2003, § 87(2)(b) struck him on the face and head with brass knuckles after accusing § 87(2)(b) of stealing his marijuana stash.

According to the 34<sup>th</sup> Precinct command log (enc. 23), Sergeant Robert Jones was on the desk from 8:00 PM to 11:10 PM on November 24, 2003.

The 34<sup>th</sup> Precinct Stop, Question and Frisk index (enc. 24) contains no entry for § 87(2)(b) on November 25, 2003.

The 34<sup>th</sup> Precinct could not locate summons § 87(2)(b) (enc. 37-D). § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Police Officer CCRB History**

Sergeant Robert Jones has no substantiated CCRB complaints that resulted in the imposition of discipline in his twenty-one-year tenure (enc. 1.1).

Officer Fabio Nunez has no substantiated CCRB complaints in his four-year tenure (enc. 1.2).

Officer Luis Vidal has no substantiated CCRB complaints in his four-year tenure (enc. 1.3)

### **Complainant CCRB History**

§ 87(2)(b) has filed three additional complaints with the CCRB (enc. 2). § 87(2)(b)

### **Conclusions and Recommendations**

#### **Undisputed Facts**

On November 23, 2003, Officers Luis Vidal and Fabio Nunez apprehended § 87(2)(b) who Officer Jessica Rivera-Caicedo arrested § 87(2)(a) 160.50.

#### **Facts in Dispute**

§ 87(2)(b) claimed that either Officer Vidal or Officer Nunez pointed his gun at § 87(2)(b) § 87(2)(b) said that four or five officers pointed their guns at § 87(2)(b) but he could not describe or otherwise identify these officers. § 87(2)(b) claimed that a white male officer pointed a gun at him. The officers interviewed denied drawing their guns.

§ 87(2)(b) claimed that an unidentified officer struck § 87(2)(b) with a gun. § 87(2)(b) denied that any officer did so, and the officers interviewed denied having done so.

§ 87(2)(b) claimed that either Officer Nunez or Officer Vidal appeared to punch § 87(2)(b) but that he did not see the officer make contact with § 87(2)(b). § 87(2)(b) alleged that Officer Vidal punched him, but Officer Vidal denied this.

§ 87(2)(b) alleged that Officer Nunez used physical force against § 87(2)(b). Officer Nunez had no recollection of the incident. § 87(2)(b) claimed that either Officer Nunez or Officer Vidal used physical force against § 87(2)(b). Neither § 87(2)(b) nor any officer recalled any physical interaction between Officer Nunez and § 87(2)(b).

§ 87(2)(b) claimed that Sergeant Jones spoke rudely and obscenely to her in the 34<sup>th</sup> Precinct stationhouse. Neither § 87(2)(b) nor § 87(2)(b) both of whom were present in the desk area when the alleged discourtesy occurred, mentioned such a discourtesy. Sergeant Jones denied speaking discourteously.

§ 87(2)(b) alleged that Officer Nunez stopped and frisked him on November 25, 2003. Although Officer Nunez had no independent recollection of his activities on that date, he denied having stopped or frisked § 87(2)(b)

#### Police Officer Identification

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

#### Credibility

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation A: Force – On November 24, 2003, at the corner of § 87(2)(b) and § 87(2)(b) an officer pointed his gun at § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(b). The OATH case *PD v. Gliner* indicates:

[T]here are no regulations or guidelines concerning the drawing of a weapon. The policy of the Department is that an officer can draw his firearm and point it at another person so long as he has a reasonable fear for his own or another's personal safety. This policy permits officers to discourage or terminate the attempted use of deadly force against themselves by providing them with a less drastic alternative to the actual use of a firearm. Thus, the Department permits an officer broad discretion to display his weapon whenever he feels that his life or the life of another is endangered. (enc. I)

§ 87(2)(b), § 87(2)(g)

**Allegation B: Force – On November 24, 2003, at the corner of § 87(2)(b) and § 87(2)(b) an officer struck § 87(2)(b) with a gun.**

§ 87(2)(b), § 87(2)(g)

**Allegation C: Force – On November 24, 2003, at the corner of § 87(2)(b) and § 87(2)(b) Officer Luis Vidal used physical force against § 87(2)(b)**

§ 87(2)(b) claimed that Officer Vidal punched him once on the right side of his face. § 87(2)(b) said that an officer made the motion of striking § 87(2)(b) but that § 87(2)(b)'s position prevented him from seeing whether or where the punch landed. Officer Vidal denied punching § 87(2)(b) and claimed that § 87(2)(b) fled, but then stopped of his own volition and permitted the officers to handcuff him. § 87(2)(b), § 87(2)(g)

§ 87(2)(b). As the DCT case *PD v. Beltran* (enc. II) indicates, closed fist punches to the head are acceptable when the subject is resisting arrest, even if the subject is not attempting to punch the officers. § 87(2)(b), § 87(2)(g)

**Allegation D: Force – On November 24, 2003, at the corner of § 87(2)(b) and § 87(2)(b) an officer used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that Officer Nunez grabbed him by the neck and put him facedown on the wall of the restaurant § 87(2)(b). § 87(2)(b), § 87(2)(g) Officer Nunez denied any recollection of the incident. Officer Vidal claimed that *he*, not Officer Nunez, grabbed § 87(2)(b) but denied placing him against the wall. § 87(2)(b), § 87(2)(g)

**Allegation E: Discourtesy – On November 24, 2003, in the 34th Precinct stationhouse, Sergeant Robert Jones spoke obscenely and rudely to § 87(2)(b)**

### ##### alleged that Sergeant Jones told her to “have a fucking seat” when she went to the 34<sup>th</sup> Precinct stationhouse. Sergeant Jones denied this allegation. Neither § 87(2)(b) nor § 87(2)(b) both of whom were in the desk area when § 87(2)(b) entered the stationhouse, mentioned this remark. § 87(2)(g)

**Allegation F: Abuse of Authority – On November 25, 2003, on § 87(2)(b) between § 87(2)(b) and § 87(2)(b) Officer Fabio Nunez stopped and questioned § 87(2)(b)**

**Allegation G: Abuse of Authority – On November 25, 2003, on § 87(2)(b) between § 87(2)(b) and § 87(2)(b) Officer Fabio Nunez frisked § 87(2)(b)**

According to Officer Nunez’s memo book, he was in the immediate vicinity of § 87(2)(b) between § 87(2)(b) and § 87(2)(b) when the alleged stop occurred. However, Officer Nunez claimed to be unable to recall specifically what he had been doing at this time. § 87(2)(b), § 87(2)(g)

No Stop, Question, and Frisk Report worksheet was completed for § 87(2)(b) § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: